Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1657

STATE OF NORTH CAROLINA,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent,

APPALACHIAN POWER COMPANY,
COMMONWEALTH OF VIRGINIA,
STATE OF WEST VIRGINIA,

Intervenors.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR APPALACHIAN POWER COMPANY

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October 7, 1976

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MEMORANDUM FOR APPALACHIAN POWER COMPANY

In a memorandum filed with this Court on September 28, 1976 the Federal Power Commission recommended that this Court grant the petition for certiorari, vacate the judgment of the court of appeals and remand to that court to consider whether the enactment of Public Law 94-407 renders this case moot.

The enactment of Public Law 94-407 plainly forecloses Appalachian Power Company's ability to implement its license and to construct the Blue Ridge Project. However, we are unable to agree with the Federal Power Commission's recommendation in this matter nor do we find any precedent for the recommended procedure.

This Court should not grant a petition for a writ of certiorari unless the Court believes the issues raised in the petition are worthy of review. For reasons set forth in our brief in opposition to certiorari, we do not believe the particular issues merit such review. Moreover, Public Law 94-407 does not affect the disposition of any of the issues presented for review by the Petitioner. Although it does raise questions regarding just compensation for the taking of the license, those issues are not involved in the issues before this Court.

We have been unable to find any case where this Court has adopted the procedure recommended here by the FPC in the circumstances of this case.

The single case cited by the FPC[1] was one where the subsequently enacted statute directly affected an issue which the Court had already decided was worthy of review. This set of circumstances has been present in every case we have been able to find wherein this Court has adopted the procedure urged by the FPC. In each of those cases the Court had either granted certiorari or noted probable jurisdiction prior to the time the Court considered the question of remanding the case to the lower court for a determination of mootness. See *White v. Regester*, 422 U.S. 935; *Hill v. Printing Industries of Gulf Coast*, 422 U.S. 937; *Geduldig v. Aiello*, 417 U.S. 484; *Socialist Labor Party v. Gilligan*, 406 U.S. 583;

[1] *United States v. New Jersey State Lottery Commission*, 420 U.S. 371.

Diffendorfer v. Central Baptist Church, 404 U.S. 412; *Hall v. Beals*, 396 U.S. 45; and *Isbrandtsen-Moller Co. v. United States*, 300 U.S. 139. See also Schopler, "What Circumstances Render Civil Case, or Issues Arising therein, Moot So As to Preclude Supreme Court's Consideration of their Merits", 44 L.Ed.2d 745, 758.

It would seem to be quite inappropriate for this Court to grant certiorari in any case merely for the purpose of remanding for a determination of mootness unless the Court first finds that the particular issues presented merit review.

For the reasons given in our brief in opposition to certiorari, we respectfully urge the Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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